

AUSFTA
Submission No:i33.....

Sidley, Kristine (REPS)

From: Davis, Brent [Brent.Davis@acci.asn.au]
Sent: Monday, 19 April 2004 11:28 AM
To: Committee, Treaties (REPS)
Subject: Australia - United States Free Trade Agreement

RECEIVED
19 APR 2004

BY:.....

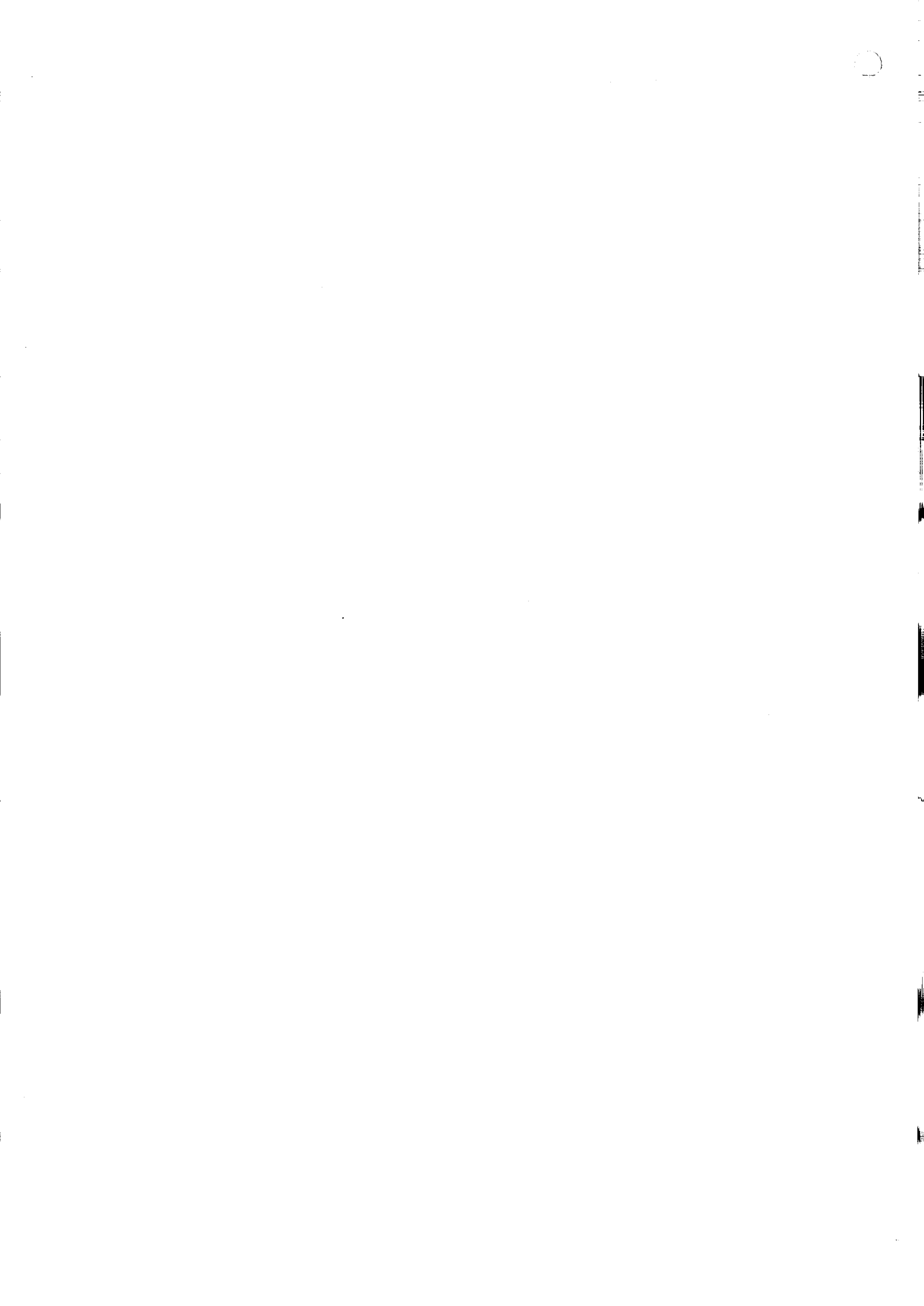
Attn: Julia Morris
Committee Secretary

Please find attached a submission by the Australian Chamber of Commerce and Industry to the JSCOT inquiry into the Australia - United States Free Trade Agreement, in the form of an article published in the April 2004 issue of our journal, ACCI Review.

Should the Committee wish to explore any of the issues raised in the attached article/submission, or any other matters pertaining to this important Free Trade Agreement, please do not hesitate to contact me.

Dr Brent Davis
Australian Chamber of Commerce and Industry
PO Box 6005, Kingston, ACT, 2604, Australia
Ph: +61-2-6273-2311 Fax: +61-2-6273-3196
Email: brent.davis@acci.asn.au
URL: www.acci.asn.au

The information contained in this message and any annexure is confidential and intended only for the named recipient (s). If you have received this message in error, please contact the sender immediately by return e-mail and destroy the original message. If you have received this message in error, you are prohibited from reading, copying, distributing and using the information. The ACCI does not warrant that any attachments are free from viruses or any other defects. You assume all liability for any loss, damage, or other consequences which may arise from opening or using the attachments. If you wish to opt out from future messages, send a reply email with the subject UNSUBSCRIBE.



THE AUSTRALIA-UNITED STATES FREE TRADE AGREEMENT

t

he Australian and United States Governments have concluded important negotiations for a bilateral Free Trade Agreement. While neither side got everything it wanted, the Free Trade Agreement (FTA) offers a solid foundation for closer economic and commercial relations between the two countries. The challenge now for Australian exporters is to convert the new market access opportunities arising from the FTA into tangible export outcomes.

Amongst the main opportunities created by the FTA for Australian exporters will be immediate and virtually duty-free access to the giant US market. In tangible terms, this will mean more than 97 per cent of Australia's manufactured exports to the US will enter tariff-free, benefiting some \$A5.9 billion of trade annually.

Australia's services exporters will gain enhanced legal protections, which will guarantee better market access and non-discriminatory treatment for service providers operating or looking to establish in the US market.

Both manufacturers and service providers will gain from more liberal access to the massive United States Government procurement market, currently valued at \$A270 billion annually.

And, contrary to some misconceptions, the FTA will deliver meaningful dividends for Australia's agricultural exporters, with over two-thirds of US tariffs on Australian rural exports going to zero from day one of the Agreement.

Manufactures

The Australia-US FTA is a big win for Australia's manufacturers, especially those already exporting, or looking to export, to the massive United States market.

As noted earlier, virtually all of our manufactured exports to the United States will be duty free from the entry into force of the FTA, with the remaining small fraction subject to known phase-out arrangements over the next decade or so.

According to the Australian Government, the main manufacturing industries likely to gain from the FTA will include metals, autos, seafood, paper and chemicals producers.

Makers of light commercial vehicles (the popular Australian 'ute'), for example, will be relieved of a burdensome 25 per cent US tariff, while seafood processors will no longer confront a 35 per cent tariff hurdle.

Usefully, a Committee on Trade in Goods will be established to examine any outstanding issues on tariffs, as well as consider issues covering important trade-related matters such as non-tariff barriers, customs administration and rules of origin.

For the Committee to be effective, it is important that the private sectors from both countries be fully engaged in its work, especially in identifying outstanding problem areas that may be frustrating the fundamental objectives of the free trade agreement.

Services

The FTA will also provide substantial practical benefits to Australian services exporters, most notably enhanced legal protections guaranteeing non-discriminatory treatment and better market access.

Importantly, the Australian negotiators have also achieved greater mutual recognition of qualifications for professional services, overcoming a major barrier to the export of services to the US market.

This outcome should mean an Australian services exporter whose qualifications are recognised in Australia – for example, architects, engineers, lawyers and medical practitioners – will have an entitlement to practice in the United States.

Education is likely to be a major beneficiary of the new, more liberal market access arrangements, for both our secondary and tertiary education sectors. In the latter case, the FTA is expected to deliver greater recognition of Australian university degrees in the United States.

The FTA also contains positive outcomes on co-operation in financial services, commitments to pursuing more liberal air services arrangements, and commitments on more liberal market access and regulation for telecommunications.

Agriculture

Contrary to some misconceptions, the FTA was not a 'no outcome' for Australian agriculture. While the final outcomes may have fallen short of expectations in some areas – witness the high profile attached to the sugar segment of the negotiations – constructive outcomes were delivered to other agricultural producers.

Taking a broader view, around two-thirds of US tariffs on Australia's rural exports will fall to zero on the entry into force of the FTA, with another 9 per cent going to zero after another four years.

Zero tariff treatment will be afforded immediately to a range of horticultural products such as oranges, mangoes, mandarins, tomatoes and cut flowers. Lamb and sheep meat producers will also see most of their tariffs reduced to zero immediately.

Other Sectors

The FTA is likely to deliver substantial cross-sectoral gains, in key areas such as intellectual property, investment, competition policy, electronic commerce, and rules of origin.

Intellectual property protection under the FTA will extend beyond that currently available under the World Trade Organisation's core intellectual property agreement, and other key international instruments to which Australia is a party (such as those of the World Intellectual Property Organisation).

The Australian Government has also made a commitment under the FTA to substantially harmonise our intellectual property laws with

those of the United States, about which commerce and industry will be seeking greater detail.

In the investment area, the FTA is expected to deliver strong investor protection measures, benefiting both Australian companies investing in the United States and raising Australia's appeal as a host-destination for American investors.

While the draft Agreement includes pro-liberalisation commitments to raise thresholds for vetting American investments in sensitive sectors of the Australian economy, it regrettably does not include any provisions for investor-to-state dispute settlement (which has been supported by commerce and industry in other international negotiations).

The FTA will also strengthen existing co-operative arrangements in competition law and policy between Australia and the United States, with the key regulatory agencies in each country working more closely together in the detection and investigation of breaches of competition law.

Key benefits to Australia are expected to include much stronger commitments from the United States' authorities to non-discriminatory enforcement of competition law, and a more robust platform upon which the Australian Competition and Consumer Commission (ACCC) can pursue companies based in the United States for breaches of Australian law.

The electronic commerce provisions of the Agreement provide commitments from both parties to recognise digital certificates issued by the other country's government (thus enabling an Australian

business to deal on-line and directly with a United States government agency, which will be very useful in bidding in government procurement).

Both countries have also made commitments to non-discrimination between products traded in the digital and the physical form, while on-line versions of key customs documentation will be accepted as equivalent of the more commonly used paper variety.

Importantly, Australia and the United States have agreed to a simple and objective test for rules of origin, which are easy to administer. Under the new arrangements, Australian manufacturers will only have to be aware of the tariff codes for imported inputs and final products in their trade with the United States (the so-called change of tariff classification approach to rules of origin).

According to the Australian Government, the new system will benefit especially those Australian manufacturers who rely heavily on imported products which experience fluctuating world prices, for example chemicals and the like.

United States Gains

The United States also stands to gain considerably from the FTA with Australia. For American manufacturers, more than 99 per cent of American goods exported to Australia will become duty-free on the entry into force of the FTA.

Industries likely to benefit from this new liberalisation have been identified by the United States Government to include chemicals, information technology products, construction equipment, and medical and scientific equipment.

The FTA is also expected to deliver American service exporters and foreign investors generally substantially more liberal access to the Australian market, with the main sectoral beneficiaries being tourism, energy, engineering and construction, education and financial services.

Importantly, the United States Government sees most US investments into Australia being exempt from Australian investment screening arrangements.

In the area of government procurement, the FTA is expected to provide American companies with non-discriminatory rights to bid on contracts from more than 80 Federal Government entities, which will be extended to sub-national (State and Local) governments over time.

American suppliers will also benefit from the elimination of Federal Government industry development programs, under which foreign suppliers have had to provide so-called 'offsets' as a condition of certain governmental contracts in Australia.

The United States Government has also emphasised the transparency aspects of the FTA, with the dispute settlement mechanisms relying on open public hearings, public access to documents and the opportunity for third parties to submit views.

The Economic Dividends

A prominent feature of the early debates over the merits, or otherwise, of an Australia – United States FTA revolved around the likely commercial and economic dividends for each country.

The Australian Government commissioned several econometric studies to look at the potential gains,

and losses, for Australia of a then-potential FTA. The main conclusions of these studies ranged from modest gains in economic growth and commercial opportunities (reflecting the largely open nature of both economies) to modest losses and adverse changes in trade flows (reflecting diversions in Australia's trade patterns).

While informative, these modelling exercises contained a number of (self-admitted) limitations. For example they tended to focus only on tariff-style barriers to bilateral trade (leaving aside the potentially more influential non-tariff barriers).

They looked primarily at manufacturers and commodities trade, leaving aside services, investment, intellectual property and government procurement (which are notoriously difficult to quantify and model), and did not fully take into account some of the dynamic benefits of trade liberalisation (again, very difficult for econometric modellers).

The positive outcomes in the difficult to estimate areas like services, intellectual property and government procurement, and the longer term, economy-wide dynamic gains point to positive economic returns to Australia from these closer economic relations with the United States.

And, of course, the ultimate commercial and economic dividends of the FTA will only come from how Australian and American businesses, especially exporters and investors, respond to the changed rules of the game.

Hopefully, the FTA with the United States will reinvigorate the

domestic interest in unilateral trade liberalisation (and broader economic reforms) in both countries, the commitment to, and the momentum for, which appears to have slowed in recent years.

While the A-US FTA holds out the prospects of meaningful benefits for Australian manufacturers and services exporters, and consumers, further unilateral trade liberalisation and economic reforms will deliver more substantial dividends.

The A-US FTA is not without its inherent risks, two of the most important of which concern the growing incidence of such agreements in international trade law, and their implications for the multilateral rules based system of global trade law.

The Australian Government, and commerce and industry will need to keep a keenly focused eye on the emergence, and content, of other bilateral and regional trade liberalisation to which we are not a direct party, but which nevertheless impact upon our national economic and trade interests. The mooted ASEAN-China FTA is a particular case in point.

In addition, our diplomatic representatives will need to work hard to ensure the renewed interest in bilateralism and regionalism around the world does not divert attention, commitment and resources away from the multilateral trade law system, in the form of the World Trade Organisation.

The main game in international trade law, and trade liberalisation, must nevertheless remain multilateralism, using the framework and mechanisms

created under the World Trade Organisation.

Put simply, the best FTA is one involving the whole world.

Where to Now?

Both the Australian and the United States Governments will now proceed through a series of steps leading to formal ratification, and then entry into force, of the Agreement, probably from 1 January 2005.

Without going into the legal minutiae, the key steps for the Australian Government will include approval by the Federal Cabinet of the final terms of the FTA and signature of the FTA by the Governor-General in Council (Australia's effective ratification).

Thereafter the FTA is tabled in both houses of the Federal Parliament, with the existing Joint Standing Committee on Treaties (and, in this case, a specially created Senate Select Committee on the USFTA) reviewing the text of the treaty, which is then followed by the introduction and debate of the necessary implementing legislation.

On the United States side, the President is required to report to the Congress on possible amendments to US law expected to arise from the FTA, which is followed by notice from the Administration to Congress of its intent to have the Agreement signed (both of which have already been done).

The Administration is also required to report to the United States International Trade Commission (ITC) on the implications of the FTA for the American economy and its international competitiveness, which the ITC reviews and then reports to the President and Congress. The final essential step is the passage of the necessary implementing legislation.

An important challenge for Australia will be the passage of the necessary implementing legislation, bringing Australia's domestic laws into conformity with its new treaty obligations.

While there is general recognition in the United States of the Single Undertaking ('all or nothing') nature of the FTA (given the requirement for the US Congress to pass or reject the treaty in its entirety, but not amend it in any

way), the same appreciation may not be present in Australia.

The Australian Parliament can play a powerful role in the treaty implementation processes through the passage, or otherwise, of the necessary legislation where the Government does not control both houses of parliament (as is the case at present).

Should the Australian Senate, which is not controlled by the Government, substantially amend or refuse to pass key items of the necessary implementing legislation, then there is an arguable case such actions could render the FTA voidable – and the gains from the negotiations potentially lost.

While there may be a temptation to score political points at various stages of the relevant parliamentary debates, it would be unfortunate if the longer-term dividends of the FTA were held hostage to such games.

Rather, while these debates may usefully look at the implications of the FTA for different winners and losers, the better perspective is that this is an Agreement for the whole Australian economy, not just one or two industries.

THE ACCI REVIEW IS PUBLISHED MONTHLY BY THE AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

Subscriptions to the ACCI Review are \$65 per year and may be ordered through ACCI's Canberra office.

For further information about issues raised in the publication, contact the *Review* editor, Dr Steven Kates, at ACCI's Canberra office.

SEE US ON THE INTERNET AT:
www.acci.asn.au



ACCI Canberra Office

Level 3, Commerce House
24 Brisbane Avenue
BARTON ACT 2600
PO Box 6005
KINGSTON ACT 2604

Phone: (02) 6273 2311
Fax: (02) 6273 3286
Email: acc@acc.asn.au

ACCI Melbourne Office

Level 4, ACCI House
55 Exhibition Street
PO Box 18008
Collins Street East
MELBOURNE VIC 8003

Phone: (03) 9668 9950
Fax: (03) 9668 9958
Email: melb@acc.asn.au